loss of earnings at a figure of an average of about £7 a week at the most, representing the difference between what he would have got from the Air Force until the age of 60 years including pension and what he would earn in the private sector until then including pension, if any, less deductions for tax as well as his own contributions to any pension scheme. I propose to leave out of consideration any further pension he would receive from the Air Force or elsewhere until he reaches the age of 70 years for the purposes of my assessment because some allowance must be made for the fact that he may not necessarily complete his normal span of 70 years.

I do not know why he left Arrow Air Services just before the trial. Presumably he is employable at similar rates to those received then with prospects of corresponding rises in pay subsequently such as he would have received in the Air Force with prospects of pension if he makes up his mind to join a firm having a graduated pension scheme.

In my view, this approach to his loss of future earnings having regard to the various contingencies including those relating to his future career with the Air Force which have to be considered in view of his comparatively short service with the Air Force before the accident, would not do him an injustice. He may never have remained in the Air Force; he may have failed to pass his examinations or he may not have been re-engaged for a 22-year period in which case he would have had to enter the private sector with *no consequent loss of earnings* at all to speak of.

To summarise, in assessing his future earnings, I have borne in mind three crucial matters which must necessarily affect any computation thereof —

1. the fact that one cannot assume that he would succeed in remaining in the Air Force or would necessarily want to so remain;

2. the fact that comparison between the Air Force rates of pay and rates of pay in the private sector must necessarily be highly speculative if not odious and that the only yardstick I have at the moment which I can apply as to the future is in respect of the rates of pay prevailing around the time the plaintiff left Arrow Air Services at £35 per week in July 1975 when had he remained in the R.A.F. he might not have qualified yet to be a Junior Technician, if he did remain in the R.A.F., and he might have earned no more than he did with Arrow Air Services;

3. the fact that between 1971 and 1974 he seems to have got off after a slow start in the private sector, which is understandable, to a rapid increase in pay from £27 per week to £35 per week within 4 months by July 1974. He was moving from one firm to another. He was however always in employment and was no doubt trying to improve his earnings notwithstanding his handicapped appearance which he did succeed in doing until he left before the trial for reasons unknown. He does not seem to have done too badly in all the circumstances and his prospects of doing better are always there and, so far as I can see, he can work beyond the age of 40 years if he does not obtain pensionable employment with one employer. If by temperament he is a rolling stone he may not have lasted very long with the R.A.F. and he must, if that is so, consider himself a fortunate young man.

In all the circumstances, an award of about £7 per week until he reaches the age of 60 years would, in my judgment, be far from unfair. This would give him 34 years' purchase at approximately $160 per month which will, because he will receive the full amount now, necessarily be less (according to the Murphy tables which the courts have been using for a very long time) than the sum reached by multiplying the average monthly loss by the total number of months in 34 years. I would accordingly award him $31,084.80 for future loss of earnings.

I might add that, although Special Damages in respect of past loss of earnings have been agreed at $19,842.35, this figure, in my opinion, is on the generous side.

Judgment will accordingly be entered for the plaintiff in the total sum of $70,923.15 to be paid to the Public Trustee on his behalf with costs.

Order accordingly.

Solicitors: *Hilborne & Co.; Tan Thian Chua & Co.*

KOH TENG LAM v. ELSIE KOH CHEN CHEE & ANOR.

[O.C.J. (Choor Singh J.) November 26, 1975]
[Singapore — Divorce Petition No. 307 of 1974]

Family Law — Divorce — Petitioner alleged cruelty and adultery committed by respondent — Burden of proof on petitioner — Standard of proof — Proof beyond reasonable doubt — Evidence — Whether facts alleged have been proved — Women's Charter (Cap 47), s. 84.

Custody — Welfare of infant — Boy of tender age — Mother better custodian — In deciding question of custody possibility of reconciliation to be taken into consideration — Guardianship of Infants Act (Cap. 22), s. 3.

The petitioner and the respondent met towards the end of 1967 when they were both studying in London. They were married at the Registry Office in London and on December 4, 1970, the respondent gave birth to a baby boy in Singapore. The petitioner was studying in London at the material time and returned to Singapore on a short holiday in April, 1972. His son was by then 19 months old. In October, 1971, the respondent joined the Baharuddin Vocational Institute where she is still employed as a design teacher.

The petitioner sought a dissolution of his marriage on the grounds of his wife's cruelty and adultery. The petitioner referred to an incident which took place on March 6, 1970 when the respondent was alleged to have caused him to suffer "great mental anguish and agony resulting in his attempting to take away his life." The petitioner claimed that on that day, the respondent, contrary to the wishes of the petitioner, sought to accept a second travelling scholarship as a result of which, both the petitioner and the respondent had a heated argument. The parties then went to see one Dr. Storey and later, a Miss Day, both of whom the petitioner claimed did not give him a chance to be heard. This made him so upset that he resorted to taking some sleeping pills.

The co-respondent is also a teacher at the Baharuddin Vocational Institute. The petitioner alleged that on many occasions the respondent and the co-respondent locked themselves together for long periods of time inside the store-room attached to the co-respondent's classroom. From this, the petitioner asked the court to infer that the respondent had committed adultery with the co-respondent. The petitioner

also relied on the fact that the respondent took contraceptive pills and later had an intra-uterine device inserted into her while he was away.

The petitioner and the respondent both desired custody of their son and each contended that custody should not be granted to the other.

Held: (1) the cases show that one basic or fundamental factor on which rests the whole concept of legal cruelty is injury to the petitioner's health or apprehension of it. If there is no injury and no danger of it, there is no legal cruelty;

(2) the cases also show that the court interferes not to punish the respondent for the past but to protect the petitioner for the future;

(3) the burden of proof is on the petitioner who has to prove beyond reasonable doubt that the respondent has since the solemnization of the marriage treated him with cruelty or that she has been guilty of adultery. *Ng* v. *Lim*[14] followed;

(4) all allegations on which the petitioner relied to prove cruelty relate to events that occurred when the parties were living together in England. The petitioner had, with full knowledge of the facts alleged, cohabited with the respondent thereafter and therefore, had condoned any cruelty on the part of the respondent;

(5) the fact that the respondent and the co-respondent were found together in a locked classroom was solid ground for profound suspicion; but suspicion of adultery, of course, is not enough, still less is mere opportunity to commit it. In this case, there was no evidence at all of any adulterous tendency or disposition on the part of either of them, nor of any undue familiarity. The petitioner had failed to prove any act of adultery on the part of the respondent and it followed that the charge of adultery failed;

(6) the petition for divorce against the respondent and co-respondent is dismissed with costs;

(7) the possibility of a reconciliation was clearly an important matter which must be taken into consideration in deciding the question of custody and the granting of custody to the mother would keep alive a hope of reconciliation;

(8) in the circumstances of this case as the child was of tender years his custody would be granted to the respondent. The petitioner will pay the respondent the sum of $1,250 per month as maintenance for his son.

Cases referred to:-

(1) *Russell v. Russell* [1897] A.C. 395.
(2) *Milford* v. *Milford* (1866) L.R. 1 P.&D. 295 at pp. 399.
(3) *Evans* v. *Evans* (1790), 1 Hag. Con 35, 37.
(4) *Jamieson* v. *Jamieson* [1952] A.C. 525.
(5) *King* v. *King* [1953] A.C. 124.
(6) *Gollins* v. *Gollins* [1964] A.C. 644.
(7) *Williams* v. *Williams* [1963] 2 All E.R. 944.
(8) *Ginesi* v. *Ginesi* [1948] P. 179.
(9) *Davies* v. *Davies* [1950] 1 All E.R. 40.
(10) *Bater v. Bater* [1950] 2 All E.R. 458.
(11) *Preston-Jones* v. *Preston-Jones* [1951] A.C. 391.
(12) *Blyth* v. *Blyth* [1966] 1 All E.R. 524.
(13) *Bastable* v. *Bastable* [1968] 3 All E.R. 701.
(14) *Ng* v. *Lim* [1969] 1 M.L.J. 139.
(15) *Ross* v. *Ross* [1930] A.C. 1.
(16) *Re F (an infant)* [1969] 2 All E.R. 766.
(17) *Re L (infant)* [1962] 3 All E.R. 1.
(18) *H and H and C* [1969] 1 All E.R. 262.
(19) *Re B (an infant)* [1962] 1 All E.R. 872, at p. 873.

DIVORCE PETITION.

Francis T. Seow for the petitioner.

Tan Kok Quan for the respondent.

Choor Singh J.: This is a petition by a husband seeking the dissolution of his marriage on the grounds of his wife's cruelty and adultery.

Having regard to the arguments on points of law addressed to me in this case, it is I think desirable that I should first deal with the law and some of the considerations which may properly be borne in mind with reference thereto.

First, the law relating to cruelty. Section 84(1)(c) of the Women's Charter (Chapter 47) provides that any husband may present a petition for divorce to the court praying that his marriage may be dissolved on the ground that his wife "has since the celebration of the said marriage treated the petitioner with cruelty. . . " Although "desertion" is defined in the Women's Charter, there is no definition of "cruelty" and the court has therefore by virtue of the provisions of section 79 of the Women's Charter "to act and give relief on principles which in the opinion of the court are as nearly as may be, comformable to the principles on which the High Court of Justice in England acts and gives relief in matrimonial proceedings."

In England the common law concept of cruelty is generally described as conduct of such a character as to have caused danger to life, limb, or health (bodily or mentally) or as to give rise to a reasonable apprehension of such danger. This was laid down in *Russell* v. *Russell*.[1] In that case, a wife made a false charge against her husband of having committed an unnatural criminal offence. She published it to the world and persisted in it after she did not believe in its truth. On the jury's findings, the trial judge granted the husband a decree of judicial separation on the ground of his wife's cruelty. The wife moved the court of appeal to set aside the decree. The learned judges of the Court of Appeal differed in opinion, on the concept of legal cruelty. Lopes and Lindley L.JJ. defined cruelty thus:

> "There must be danger to life, limb or health, bodily or mentally, or a reasonable apprehension of it."

They set aside the decree of judicial separation. The wife appealed to the House of Lords. The majority of the House approved the doctrine of danger enunciated by Lopes and Lindley L.JJ. and affirmed the decision of the Court of Appeal. Lord Herschell who delivered the leading judgment of the majority view, after a thorough examination of the older authorities, said, at page 456: —

> "Upon a review of the authorities prior to the time when the Divorce Act came into operation, I think it may confidently be asserted that in not a single case was a divorce on the ground of cruelty granted unless there had been bodily hurt or injury to health, or a reasonable apprehension of one or other of these. And it may with equal confidence be asserted that no other test was ever applied when it had to be determined whether a sentence of divorce on the ground of cruelty should be pronounced. I can find no case in which the impossibility that the duties of married life could be discharged was treated as the criterion."

Lord Herschell then proceeded to examine the authorities after 1858 and quoted with approval the following passage from the judgment of Lord Penzance in *Milford* v. *Milford*,[2] at page 299: —

> "The essential features of cruelty are familiar. There must be actual violence of such a character as to endanger personal health or safety or there must be reasonable apprehension of it. The court, as Lord Stowell once said, has never been driven off this ground; nor do the cases cited, whatever general expression may have fallen from the court, affect to decide that anything short of this will be sufficient to found a decree

upon cruelty. The ground of the court's interference is the wife's safety, and the impossibility of her fulfilling the duties of matrimony in a state of dread."

Lord Herschell ended his speech with the following observations, at page 460: —

"The opinion may be held by many... that relief should be always given where the prospect of happiness so long as the parties cohabited appeared hopeless. But these are considerations for the legislature and not for the courts. If divorce *a mensa et thoro* is to be extended beyond the limits within which it has hitherto been confined, the change must, in my opinion, be made by legislation. Our duty on the present occasion is to administer and not to make the law."

Lord Stowell's proposition in *Evans* v. *Evans*,(3) was approved by the House of Lords, and may be put thus: before the court can find a husband guilty of legal cruelty towards his wife, it is necessary to show that he has either inflicted bodily injury upon her, or has so conducted himself towards her as to render future cohabitation more or less dangerous to life, or limb, or mental or bodily health. He was careful to avoid any definition of cruelty, but he did add: "The causes must be grave and weighty, and such as to show an absolute impossibility that the duties of married life can be discharged.". But the majority of their Lordships in *Russell* v. *Russell, supra*, declined to go beyond the definition set out above.

Valuable guidance as to what used to be termed mental cruelty in a matrimonial cause is found in the speeches in the House of Lords in *Jamieson* v. *Jamieson*,(4) a Scottish case in which it was held that there was no difference in principle between the English and Scottish laws regarding the kind or degree of cruelty justifying the remedy of divorce. Lord Merriman said, at page 545: —

"... when the legal conception of cruelty is described as being conduct of such a character as to cause danger to life, limb or health, bodily or mental, or to give rise to a reasonable apprehension of such danger, it is vital to bear in mind that it comprises two distinct elements: first, the ill-treatment complained of, and, secondly, the resultant danger or the apprehension thereof. Thus it is inaccurate, and liable to lead to confusion, if the word "cruelty" is used as descriptive only of the conduct complained of apart from its effect on the victim.... In my opinion it is indisputable that the twofold test was laid down in *Russell* v. *Russell* because the majority, both in the court of appeal and in your Lordships' House, were satisfied that protection of the aggrieved spouse lay at the root of the matter."

In a later case in the House of Lords, *King* v. *King*,(5) Lord Normand said in his speech supporting the decision of the majority: —

"The general rule in all questions of cruelty is that the whole matrimonial relationship must be considered and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. Wilful accusations may be made which are not true and for which there are no probable grounds, and yet they may not amount to cruelty. To take an obvious example, they may have been provoked by the cruel conduct of the other spouse. There is in many cases no easy rule, no clear line of demarcation which divides cruelty from something which does not amount to cruelty.

The issue may become one of great difficulty in which the decision must be largely a matter of the discretion of the judge who saw and heard the witnesses and who has considered the conduct of both parties, and the whole circumstances in relation to the temperament and character of the respondent spouse. If the trial judge in the exercise of this discretion comes to the conclusion that the conduct of the respondent is, notwithstanding the provocation received or the difficulties and stresses endured, really an inexcusable offence against the other spouse, his judgment should be respected and treated as conclusive. I have used the word 'inexcusable' but 'unpardonable' or 'grossly excessive' would equally convey what I mean."

And Lord Reid pointed out that: —

"... it is not right first to ask whether the respondent's conduct was cruel in fact and then ask whether it can in any way be justified. The question whether the respondent treated her husband with cruelty is a single question only to be answered after all the facts have been taken into account.... in a case of this character the wife's conduct must be judged in the light of the whole history of the marriage."

In *Gollins* v. *Gollins*,(6) Lord Pearce said: —

"It is impossible to give a comprehensive definition of cruelty, but when reprehensible conduct or departure from the normal standards of conjugal kindness causes injury to health or an apprehension of it, it is cruelty if a reasonable person, after taking due account of the temperament and all the other particular circumstances would consider that the conduct complained of is such that this spouse should not be called upon to endure it."

And in the same case, Lord Morris, in his dissenting judgment, emphasised that an allegation of cruelty is a very serious matter. He said, at page 672: —

"To be found guilty of cruelty involves not only a slur which would be deeply wounding to any self-respecting person but also involves certain specific consequences. The matters complained of as amounting to cruelty must therefore extend much beyond the trivial or the casual. They must be serious matters. If they were not they surely could not be the foundation for an order affecting the matrimonial relationship. When in 1790 Sir William Scott (in *Evans* v. *Evans*, 1 Hag. Con 35, 37) said that the causes must be 'grave and weighty' he laid down a principle which has never been challenged. Even the particular words that he used in expressing the principle have been employed in subsequent periods with a measure of tenacious fidelity. The conduct complained of must therefore go beyond what the particular complaining spouse ought reasonably in all the circumstances to have been expected to tolerate.

Not only must the matters complained of be serious, they must also be such as to have caused injury to health or a reasonable apprehension of such injury (*Russell* v. *Russell*, (1897) A.C. 395)."

In the same case Lord Pearce also gave some guidance as to how the court should approach the question of cruelty. He said, at page 695: —

"I agree with Lord Merriman whose practice in cases of mental cruelty was always to make up his mind first whether there was injury or apprehended injury to health. In the light of that vital fact the court has then to decide whether the sum total of the reprehensible conduct was cruel. That depends on whether the cumulative conduct was sufficiently weighty to say that from a reasonable person's point of view after a consideration of any excuse which this respondent might have in the circumstances, the conduct is such that this petitioner ought not to be called on to endure it...."

Most of the old English cases concern charges of cruelty made by wives against husbands but since 1937 when cruelty became a ground for divorce in England there have been numerous cases in which husbands have successfully availed themselves of this remedy. It makes no difference whether the charge is brought by a wife or a husband because the principles on which relief is given are the same in either case.

The cases show that one basic or fundamental factor on which rests the whole concept of legal cruelty is injury to the petitioner's health or apprehension of it. That is the golden thread that runs through all the cases in which cruelty has been successfully establish-

ed. If there is no injury and no danger of it, there is no legal cruelty. That in fact is the *ratio decidendi* of the oft quoted case of *Russell* v. *Russell, supra.*

The cases also show that the court interferes not to punish the respondent for the past but to protect the petitioner for the future. *Williams* v. *Williams,*[7] *per* Lord Pearce, and *Jamieson* v. *Jamieson, supra, per* Lord Merriman.

The burden of proof in this case is clearly on the petitioner. He has to prove that the respondent has since the solemnization of the marriage treated him with cruelty or that she has been guilty of adultery. But, what is the standard of proof applicable to establish the said matrimonial offences. Counsel for the respondent submits that the petitioner must prove beyond a reasonable doubt that the respondent is guilty of cruelty or of adultery. On the other hand counsel for the petitioner contends that the petitioner is no longer required to prove these matrimonial offences beyond a reasonable doubt and that it is sufficient if he does so on a balance of probabilities. As there was considerable debate on this matter, it is necessary to go through the cases.

In *Ginesi* v. *Ginesi,*[8] the Court of Appeal requested authorities to be cited on the standard of proof required to substantiate a charge of cruelty. Ancient authorities as old as 1626 were cited. Tucker L.J. in his judgment after reviewing the ancient as well as the modern authorities, said, at page 181: —

"I am satisfied that Hudson J. was correct when he said that adultery must be proved with the same degree of strictness as is required for the proof of a criminal offence — and I limit my observation to cases of adultery. Adultery was regarded by the ecclesiastical courts as a quasi-criminal offence, and it must be proved with the same strictness as is required in a criminal case. That means that it must be proved beyond all reasonable doubt to the satisfaction of the tribunal of fact."

In *Davies* v. *Davies,*[9] Bucknill and Somerville L.JJ. held that the word "strict" is sufficiently apt to describe the measure and standard of proof required of a charge of cruelty in the divorce court and that it is unnecessary to introduce any question of the standard of proof required of a criminal charge. Denning L.J. emphasised that the standard of proof as that required in criminal cases is not needed. The Court of Appeal held that the charge of cruelty was proved beyond reasonable doubt and the husband was entitled to a decree. In reference to the words "satisfied on the evidence that the case of the petitioner has been proved" Bucknill L.J. said, at page 42: —

"I understand that simply to mean that, if there is any reasonable doubt at the end of the case, the burden of proof has not been discharged and the decree ought not to be made."

In *Bater* v. *Bater,*[10] the trial judge (Mr. Commissioner Grazebrook) in his judgment said that the petitioner "had to prove her case beyond reasonable doubt." The Court of Appeal held that that was a correct statement of the law and that the trial judge had not misdirected himself. Denning L.J. said, at page 459: —

"I agree with my brothers that the use of the phrase 'reasonable doubt' by the Commissioner was not a misdirection.... If the Commissioner had,..., put the case higher and said that the case had to be proved with the same strictness as a crime is proved in a criminal court, then he would, I think, have misdirected himself because that would be the very error which this court corrected in *Davies* v. *Davies, supra.* It would be adopting too high a standard. The divorce court is a civil court, not a criminal court, and it should not adopt the rules and standards of a criminal court."

Bucknill L.J. said, at page 458: —

"...I do not understand how a court can be satisfied that a charge has been proved — and the statute requires that the court shall be satisfied before pronouncing a decree — if at the end of the case the court has a reasonable doubt whether the case has been proved. To be satisfied and at the same time to have a reasonable doubt seems to me to be an impossible state of mind. I will add this. I regard proceedings for divorce as proceedings of very great importance, not only to the parties, but also to the State. If a wife is divorced, she not only has that stigma resting on her for the rest of her life, but it may mean she will lose the maintenance to which she is entitled from her husband and the custody of her children. It may, indeed, mean ruin to her. If a high standard of proof is to be required because of the importance of a particular case to the parties and also to the community, divorce proceedings require that high standard...."

These views were endorsed in speeches in the House of Lords in *Preston-Jones* v. *Preston-Jones,*[11] where the meaning of the word "satisfied" came directly in issue. In that case the husband's allegation that his wife had committed adultery was based solely on the circumstance that during the period between 186 and 360 days before the birth of a child to her he had been continuously absent abroad. It was argued on behalf of the wife that proof beyond reasonable doubt that she had committed adultery would not suffice and that the husband could only succeed if he proved scientifically that it was impossible for him to be the father. That contention was not accepted. Lord MacDermott referred to the duty of the court to be satisfied on the evidence and having pointed out that the evidence must be "clear and satisfactory beyond a mere balance of probabilities" added, at page 417: —

"...If a judge is satisfied beyond reasonable doubt as to the commission of the matrimonial offence relied upon by a petitioner as ground for divorce, he must surely be 'satisfied' within the meaning of the enactment, and no less so in cases of adultery where the circumstances are such as to involve the paternity of a child. On the other hand, I am unable to subscribe to the view which, though not propounded here, has had its adherents, namely, that on its true construction the word 'satisfied' is capable of connoting something less than proof beyond reasonable doubt. The jurisdiction in divorce involves that status of the parties and the public interest requires that the marriage bond shall not be set aside lightly or without strict inquiry. The terms of the statute recognise this plainly, and I think it would be quite out of keeping with the anxious nature of its provisions to hold that the court might be 'satisfied' in respect of a ground for dissolution, with something less than proof beyond reasonable doubt. I should perhaps, add that I do not base my conclusions as to the appropriate standard of proof on any analogy drawn from the criminal law. I do not think it is possible to say, at any rate since the decision of this House in *Mordaunt* v. *Moncrieffe,* (1874) L.R. 2 Sc. & D. 374, that the two jurisdictions are other than distinct. The true reason, as it seems to me, why both accept the same general standard — proof beyond reasonable doubt — lies not in any analogy, but in the gravity and public importance of the issues with which each is concerned...."

Lord Simonds was in agreement with Lord MacDermott. Lord Simonds in his speech referred to the fact that in that case a finding of adultery would in effect bastardise the child and he made his view clear that for a court to be satisfied there has to be proof which established a matter beyond all reasonable

doubt. Lord Morton of Henryton in his speech said that the burden of proof of adultery was certainly no heavier than proof beyond reasonable doubt: he added that counsel for the appellant had not contended that it was any lighter. He said that the test of being satisfied beyond a reasonable doubt was the correct one and that when expert evidence is given it must be weighed with care "in order to ascertain whether the husband has proved his case beyond reasonable doubt."

The next case, on the standard of proof applicable in divorce cases, which went to the House of Lords, is *Blyth* v. *Blyth*.[12] As counsel for the petitioner relies heavily on this case, it is necessary to examine it in some detail. Dealing with the meaning of "satisfied", Lord Morris, who delivered the first judgment, said, at page 530: —

"My Lords, the word 'satisfied' is a clear and simple one and one that is well understood. I would hope that interpretation or explanation of the word would be unnecessary. It needs no addition. From it there should be no subtraction. The courts must not strengthen it: nor must they weaken it. Nor would I think it desirable that any kind of gloss should be put on it. When Parliament has ordained that a court must be satisfied only Parliament can prescribe a lesser requirement. No one, whether to be judge or juror, would in fact be 'satisfied' if he was in a state of reasonable doubt. It may be, however, that in some sets of circumstances and in regard to some issues the stage of being satisfied (and so of eliminating reasonable doubt) is much easier reached than in others. The measure of what is a 'reasonable' doubt will also vary with the circumstances; but the standard of proof has been laid down by Parliament when it directs that a court must be satisfied. . . ."

Lord Morris then referred, with approval, to the observation of Bucknill L.J. in *Bater* v. *Bater, supra*, and *Davies* v. *Davies, supra*, and to the speech of Lord MacDermott in *Preston-Jones* v. *Preston-Jones, supra*, and continued, at page 531: —

"My Lords, the jurisdiction in divorce is statutory and by statute certain duties are imposed on the court. There is no occasion to seek to compare or to equate the jurisdiction in divorce with jurisdiction in either criminal or in other civil matters. . . . Then if the court is 'satisfied' as to certain separate questions (a) that the case for the petition has been proved and (b) (where the ground of the petition is adultery) that the petitioner has not in any manner been accessory to or connived at or condoned the adultery . . . then the court 'shall' pronounce a decree of divorce: if the court is not 'satisfied' with respect to any of those matters then the court 'shall' dismiss the petition. My Lords, having regard to the imperative words of the statute I find it impossible to accept the contention that the word 'satisfied' means one thing at one moment and something different at another. . . ."

Lord Morton was of the same view. He said, at page 533: —

"My Lords, apart from authority I should have thought that no judge can be 'satisfied' in the natural meaning of the word, if he feels a reasonable doubt on the matter in question. If a judge says to himself: 'I feel a doubt on this matter and, in my opinion, the doubt is a reasonable one' can he possibly go on to say that he is satisfied? I think not. If, on the other hand, the statute uses the words 'finds' or 'holds' or 'decides', it is clearly open to a judge to give a decision on the balance of probabilities. I do not seek to add the words 'beyond reasonable doubt' to the word 'satisfied', for I think that these words are implicit in the word which has been used in the statute.

In the case of *Preston-Jones* v. *Preston-Jones, supra* this House considered the meaning of the word 'satisfied' in section 4(2)(a) of the Act of 1950. Lord MacDermott expressed the view that in respect of a ground for dissolution of marriage the word 'satisfied' was not capable of connoting 'something less than proof beyond reasonable doubt'. Lord Simonds expressed his agreement with this view and I think that it is clear that Lord Oaksey and I took the same view. Further as Willmer L.J. pointed out in the present case the word 'satisfied' covers both limbs of the section, and I find it impossible to give one meaning to the word when it is applied to limb (a) and another meaning when it is applied to limb (b). For these reasons, my Lords, I am of opinion that the word 'satisfied' in section 4(2) of the Act of 1950 means 'satisfied beyond reasonable doubt'."

Lord Denning thought that a considerably lesser standard of proof could be adopted. He said, at page 536: —

". . . I hold that . . . . the word 'satisfied' does not mean 'satisfied beyond reasonable doubt'. The legislature is quite capable of putting in the words 'beyond reasonable doubt' if it meant it. It did not do so. It simply said *on whom* the burden of proof rested, leaving it to the court itself to decide what standard of proof was required in order to be 'satisfied'. . . . We should not say that adultery must be proved with the same strictness as is required in a criminal case. We should say simply that it must be proved to the satisfaction of the court. . . . In short it comes to this: so far as the *grounds* for divorce are concerned, the case, like any civil case, may be proved by a preponderance of probability, but the degree of probability depends on the subject-matter. In proportion as the offence is grave, so ought the proof to be clear. So far as the *bars* to divorce are concerned, like connivance or condonation, the petitioner need only show that on balance of probability he did not connive or condone or as the case may be."

Lord Pearce took the same view as Lord Denning had taken. The fifth member of the House, Lord Pearson, adopted what has been described as an intermediate position. Having quoted at some length from what Lord MacDermott said in *Preston-Jones* v. *Preston-Jones, supra*, Lord Pearson commented, at page 542: —

". . . This language is consistent with the view that the word 'satisfied' does not as a matter of interpretation mean 'satisfied beyond reasonable doubt', and that the requirement of proof beyond reasonable doubt may be limited to the grounds for dissolution and may not extend to matters referred to in subparagraphs (b) and (c). . . ."

which relate to matters of connivance, condonation etc. In other words, Lord Pearson would have been disposed to apply the standard of "satisfaction beyond reasonable doubt" where proof of a matrimonial offence is being considered, but would not apply that standard in relation to such matters as condonation, which was the subject-matter of the appeal to the House of Lords in that case. It will be seen therefore that although the opinions expressed by all the five lords on the standard of proof required to establish adultery were clearly obiter, nevertheless three opinions were in favour of "proof beyond a reasonable doubt" and two were for "a preponderance of probabilities".

In *Blyth* v. *Blyth, supra*, Lord Denning would appear to have shifted from the position he took 16 years earlier in *Bater* v. *Bater, supra*. In that case in which the issue was adultery or no adultery he had agreed with Bucknill and Somervell L.JJ. that the trial judge's statement that the petitioner "had to prove her case beyond reasonable doubt" was not a misdirection.

Counsel for the petitioner also relies on the decision of the Court of Appeal in *Bastable* v. *Bastable*.[13] In that case, Willmer L.J. after referring to *Preston-Jones* v. *Preston-Jones, supra*, and *Blyth* v. *Blyth, supra*, stated that in his view, "a high standard of

proof is required in order to satisfy the court that the offence has been committed". After referring to the facts, he said, at page 206: —

"... Had it been a matter of merely assessing an ordinary balance of probabilities as between plaintiff and defendant in normal civil litigation, I might have found myself able to agree with the learned judge. Bearing in mind, however, that the standard of proof to be exacted in a matrimonial cause of this sort is on any view a high one, I find myself unable to agree with the view of the learned judge. I do not think that in all the circumstances such evidence as was given was sufficient to discharge the burden of proof. In those circumstances in my judgment the learned judge's decision with regard to the issue of adultery should be reversed...."

Winn L.J. agreed with this view. The third member of the court Edmund Davies L.J. said, at page 708: —

"... In the present appeal it can be no possible ground for complaint by the wife if we apply the 'preponderance of probability' standard of proof to the adultery charge, reminding ourselves that 'in proportion as the offence is grave, so ought the proof to be clear'. Applying that standard to the facts of the present case, while (as I observed at the outset) there appear solid grounds for entertaining the gravest suspicion in this case, I have to say that I am not satisfied that adultery between these two parties was established. I would accordingly concur with my lords in holding that this appeal should be allowed...."

It is clear that inspite of what Willmer and Edmund Davies L.JJ. stated earlier on in their judgments, the test which they in fact applied to the facts of the case was "proof beyond a reasonable doubt". Willmer L.J. with whom Winn L.J. agreed, made it clear that he was not applying the "balance of probability" test. And Edmund Davies L.J. said that there appeared to him "solid ground for entertaining the gravest suspicion", and he was therefore not satisfied that adultery was established. This means that he expected proof beyond a reasonable doubt. In any event two of the three judges who formed the Court of Appeal clearly refused to apply the "balance of probability" standard of proof to the facts of the case.

The decision of the House of Lords in *Preston-Jones* v. *Preston-Jones, supra,* where the meaning of the expression "satisfied" in relation to proof of adultery was directly in issue, has not been over-ruled. The decision in *Blyth* v. *Blyth, supra,* is of no help to the petitioner as all the dicta there was obiter. *Bastable* v. *Bastable, supra,* again does not help the petitioner. There is no authority for the submission that the principle of "proof beyond reasonable doubt" has been discarded and is no longer applicable when cruelty or adultery is alleged as a ground for divorce.

In Singapore, the law still is that the standard of proof applicable is "proof beyond reasonable doubt". This was the test applied by the Federal Court of Malaysia holden in Singapore in *Ng* v. *Lim.*[14] In that case the wife successfully petitioned for dissolution of her marriage on the ground of her husband's cruelty and on appeal counsel for the husband "laid stress on the principle that in the case of a petition for divorce based on cruelty the case against the respondent must be proved beyond reasonable doubt". Counsel argued that "the trial judge had overlooked this principle and had applied the standard of proof in civil cases, where findings of fact can be arrived at on the balance of probabilities". The Federal Court in rejecting this submission, said, at page 142: —

"... Having regard to the language used by the learned trial judge and to the tenor of his judgment and also to the fact that he was a judge of great experience in criminal law, who had heard criminal cases in the High Court for eleven years, we find it impossible to say that he has overlooked the principle that the case against the respondent had to be proved beyond reasonable doubt...."

The decision of the Federal Court in *Ng* v. *Lim, supra,* is not only in accordance with the law in England but is also a decision which is binding on me and I am therefore obliged to apply the "proof beyond reasonable doubt" standard of proof in this case.

The facts of the case, in outline, are these. The petitioner met the respondent in London towards the end of 1967. The petitioner was then studying at the Imperial College and the respondent was doing her post-graduate studies at the Royal College of Art. They became engaged in London on June 29, 1969. The engagement was attended by the petitioner's mother. On July 14, 1969 they were married at the Registry office in the Royal Borough of Kensington, Chelsea, London.

After their marriage they lived together at the Lillian Penson Hall, London. They had their honeymoon in Europe. It was uneventful. They were away from London for about three weeks. After their honeymoon, the petitioner returned to London while the respondent went on a tour of the Middle East countries on a scholarship travel grant.

On the March 6, 1970, there was an incident involving the petitioner and the respondent which ended with the petitioner going into the bathroom of his flat and taking some sleeping pills. The police had to break open the bathroom door and send him to hospital. This incident will be dealt with later in more detail.

In July 1970 the respondent was pregnant and it was decided by the petitioner and his mother that the respondent should deliver the baby in Singapore. Respondent agreed to this and on July 3, 1970, the petitioner's mother brought the respondent to Singapore.

On August 28, 1970 the petitioner left London and came to Singapore and spent about two weeks with the respondent at his parents' house in Singapore.

On December 4, 1970 the respondent gave birth at the Mt. Alvernia Hospital to a baby boy who was named Koh Lib Wee.

The petitioner did not bother to come and see his son until April 1972 when he came to Singapore on a short holiday. His son was by then 19 months old.

In May 1972 the petitioner and the respondent went on a holiday to Hong Kong but the respondent had to return after three days as her son who had been left behind in Singapore contracted measles and the petitioner's mother could not handle the situation.

In October 1971 the respondent joined the Baharuddin Vocational Institute as a Design Teacher. The co-respondent was then and still is employed at the Baharuddin Vocational Institute as a teacher in applied sculpture.

On the April 27, 1974 which was a Saturday, the respondent and the co-respondent were found to be together in the classroom of the co-respondent at about 11 a.m. when the door of the classroom was locked from the inside. This incident will be dealt with later in more detail.

On the May 12, 1974, the co-respondent's wife Mrs. Tan Teng Kee went to 15 Matlock Rise, the residence of the petitioner's parents and there she accused the respondent of having an affair with her husband. The petitioner was informed of this accusation and on July 18, 1974 he returned from London. Not satisfied with the respondent's explanation, the petitioner commenced these proceedings on September 7, 1974.

I propose to deal first with the charge of cruelty as in my opinion it can be disposed of quite shortly. It has been said that upon an allegation of cruelty the court should first ask itself whether the evidence establishes injury, actual or apprehended, to the health of the complaining spouse; secondly, if there was such injury, whether it was due to the conduct of the spouse charged with cruelty; thirdly, if it was, whether that conduct constitutes cruelty. The court should consider these three questions in the above order, since if at the end of the day it is found that the health of the complaining spouse was not affected, time spent in considering the quality of the conduct complained of is time wasted.

The allegation of cruelty is pleaded in paragraph 8 of the petition, as follows: —

"8. That the respondent has since the celebration of the said marriage treated the petitioner with cruelty and that the petitioner has thereby suffered injury to his health."

Upon the respondent's request, "Further and Better Particulars" were given and these may be summarised as follows: —

(1) Immediately after the honeymoon, the respondent, against the wishes of the petitioner, left him and went on her own to southern Europe and the near Eastern countries for about five or six weeks knowing that it would distress the petitioner.

(2) On her return, she brought back gifts for her former boy friend with whom she had promised to have nothing further to do.

(3) Furthermore, she continued to have secret trysts with him.

(4) She refused:
   (a) to wear her wedding ring;
   (b) to use her married name; and
   (c) to apply for a Singapore passport as it would involve changing her marital status knowing that all this would distress the petitioner.

(5) She ignored the petitioner's advice during her pregnancy to rest and retire early for her own sake and the sake of their unborn child and instead continued to work late at night and at times throughout the early hours of the next day for three to four times a week.

(6) In the result the petitioner suffered great mental anguish and agony resulting in his attempting to take away his life.

It will be seen that the only fact pleaded and relied upon to bring the petitioner's case within the doctrine of danger to life or health is the allegation that "the petitioner suffered great mental anguish and agony resulting in his attempting to take his life". This is clearly a reference to an incident which took place on the March 6, 1970. The petitioner's version of that incident is as follows: —

"On or about March 6, 1970 at the Imperial College grounds respondent told me that she was going to accept a second travelling scholarship. That was the first time I heard about it and I asked her when she applied for it. She said, 'A few weeks ago'. She told me it was similar to her first travelling scholarship and she had to use up the funds under the scholarship by the end of summer of that year — 1970. First of all it was a very upleasant surprise. Secondly, I was worried because it coincided with the delivery of her baby. The baby was expected around about that period and it was not good for her to travel in such an advanced state of pregnancy. I tried to reason out with her. She refused to listen. She made a scene in public. She raised her voice and waved her hands and attracted attention of passers-by. She was scolding me and I was very embarrassed. I begged her to calm down but she continued making a scene. So I suggested to her that under that situation it would be better to see Dr. Peter Storey. I did not use my hands on her. It is not true that I beat her with an umbrella. She reluctantly agreed to see Dr. Peter Storey. Both of us went to see Dr. Storey. I thought at that time that he would be a suitable person to arbitrate on the matter.

We both went to Dr. Storey's office. To my surprise, respondent suddenly acted dramatically and accused me of beating her with my umbrella. She asked for his advice on my alleged behaviour. She said that I was violent and unreasonable and other such things. Dr. Storey advised her to get the services of a lawyer to divorce me. I was totally shocked to hear such advice coming from Dr. Storey who had not heard me at all. I was annoyed and depressed and later we left. I had no chance to get in a word — to tell my version. He never heard my side of the storey. I did not even have the chance to deny the allegations of respondent. The respondent was crying in Dr. Storey's office. She had once told me that in school in Hong Kong she was very active in dramas and debates. She can turn her tears on and off. I suggested to respondent that we go to a church near the Imperial College grounds as both of us were emotionally very disturbed when we left Dr. Storey. The atmosphere of the church I thought would help us to think things over. Incidentally it was also the place where we had pledged our vows of eternal love.

At the church we were trying to talk things over. She was in tears. I was depressed and it was in that kind of situation that we were trying to talk things over. She opened her handbag and took out a tissue paper to dry her tears. I saw that there was a designer's knife in her bag. It is a kind of contraption in which you can insert a razor blade for cutting papers and boards. She always carried it in her handbag. When I saw it I took it away from her because I knew she was always quick tempered and I took it away from her because I was concerned about her own safety. Because I was afraid she might use it on herself or on me. She is very unpredictable, emotionally. For instance whenever we had quarrels in our flat,, she would throw things on me or at the wall. And very frequently she would run out of the flat, create noise and make a scene. I can vividly recall two incidents. First one is when she tried to prove her love for me by cutting across the palm of her hand with her designer's knife. Second incident was our quarrel over the boy Kenneth Hughes. She took the painting given by this boy to us as a wedding present and cut it with the designer's knife. It was an oil painting. When I took away from her the designer's knife she did not protest. When she had calmed down emotionally I suggested to her that we go back to our flat which we did. At the flat we were still in the hall when we met Miss Janet Day the bursar of the Hall. The respondent immediately put on an act and created a scene. Miss Day invited us to her own flat. There she told Miss Day that I had a knife in my pocket and wanted to use it on her. Respondent acted in a very convincing way that I could not even get a word in. Miss Day asked me to

give her the knife which I did. I felt so disgusted and frustrated that I left Miss Day's flat and went to my own flat which was on the same floor. On two occasions that day I had met two persons and I was not given the opportunity of putting in my side of the story. I was disgusted and very angry. I just walked out of Miss Day's flat.

On entering my flat I went to the bathroom. I can't recall if I locked the door of the flat but I locked the bathroom and inside the bathroom I took some sleeping pills. These sleeping pills were kept in the bathroom. I took the sleeping pills and sat on the edge of the long bath and later I took some more and again sat on the edge of the long bath. Later I passed out.

I took the sleeping pills because I was very upset and frustrated and I knew that I had no way to control the situation. I had lost control of the situation. Knowing the respondent's stubbornness and her continued behaviour as an actress I saw no possibility of being able to reverse that unpleasant situation. I felt frustrated because her acting had completely isolated me — I mean nobody understood me or shared my thoughts. The next thing I remember was waking up in St. Mary's Hospital...."

The petitioner was asked in cross-examination: —

"Q. Why did you take the sleeping pills?

A. It was a mixture of feelings and thoughts which led me to the taking of the pills.

Q. What feelings and thoughts?

A. Dr. Storey never heard my version, also Miss Day again never heard my version. My well meaning intention was totally deformed or twisted by the respondent into something horrible by her acting and unnecessary fuss.

Q. How many pills did you take?

A. Took them twice — three or four each time.

Q. Did you take them with the intention of committing suicide?

A. No. But I was really fed up."

It is clear from the petitioner's own admission that this was not an attempt to commit suicide. The petitioner admits that at the most he took eight sleeping pills. The strength of the pills is not given but it could not have been a fatal dose. There is no medical evidence that it was a fatal dose or that the life of the petitioner was at any time in danger. According to the respondent, whose version I accept, the petitioner was found in a semi-conscious state when the police broke open the door of his bathroom and they walked him up and down the corridor until the arrival of the ambulance.

The petitioner has explained why he took the sleeping pills. He was fed up with what happened on that day and was annoyed, not so much with the respondent as with Dr. Peter Storey and Miss Day, both of whom did not, according to him, give him a hearing. He took the sleeping pills because he felt frustrated and he thought that was the best way to register his protest. The taking of the sleeping pills had nothing to do with the facts alleged to constitute cruelty.

Much has been made of this incident by counsel for the petitioner, but in the overall picture of this marriage, it was in fact nothing more than a storm in a tea cup. It was soon forgotten by both parties. In fact from his hospital bed the petitioner flew to New York, not for medical attention, but to attend a conference. This shows what little effect the incident had on him. The incident has been magnified out of all proportion by the petitioner and his family.

That incident happened on March 6, 1970. That is more than five years ago. No medical evidence has been called as to the present state of the petitioner's health. He appeared to me to be in excellent health. In the absence of medical evidence it must be presumed that he is in good health. It is true that three eminent consultant psychiatrists, Dr. Peter Storey, Dr. C. N. Chen and Dr. Wong Sze Tai, have expressed the opinion, which I accept, that the petitioner suffers from a personality disorder. But that has nothing to do with the respondent. She did not cause it. It is not due to her conduct. It is something with which he was born. There is no evidence at all that the petitioner's health, physical or mental, has been injured by the conduct of the respondent or that there is a reasonable apprehension that it will be adversely affected. There is no question here of personal violence and in the circumstances of the case I see no evidence of any apprehended injury to the petitioner's physical or mental health against which he requires protection. The charge of cruelty therefore fails.

There is also another reason why the charge of cruelty fails. All the allegations on which the petitioner relies to prove cruelty relate to events that occurred when the parties were living together in England. In fact they relate to events before the so-called "attempted suicide" incident of March 6, 1970. After this incident, the petitioner with full knowledge of the facts alleged cohabited with the respondent from March 18, 1970 to July 3, 1970 when the respondent left London for Singapore. Subsequent to that the petitioner has returned to Singapore on several visits, and during these visits he has again cohabited with the respondent in Singapore. Any cruelty on the part of the respondent has therefore in law been condoned by the petitioner. This is conceded by counsel for the petitioner but he submits that the subsequent adultery of the respondent has revived the matrimonial offence of cruelty. Counsel for the respondent says that revival has not been pleaded and therefore there can be no revival. The points taken by both counsel are purely academic because it has been shown that the respondent has not been guilty of cruelty.

The charge of adultery is pleaded in paragraph 7 of the Petition as follows: —

"That the respondent has frequently committed adultery with other persons unknown and with Tan Teng Kee (hereinafter called the co-respondent) at Baharuddin Vocational Institute, Stirling Road, Singapore and other diverse places unknown."

Further and better particulars were requested and they are pleaded as follows: —

"The petitioner cannot give dates and times when adultery was committed, but the nature of his case is as follows: —

(a) The respondent and co-respondent are both teachers employed by the Ministry of Education in Baharuddin Vocational Institute, Stirling Road, Singapore. They were on extremely affectionate terms. The petitioner will rely on the matters hereinafter mentioned. Some time after the respondent's posting to Baharuddin Vocational Institute in or about October 1971, the respondent frequently visited the co-respondent in his class-room. On many occasions, they locked themselves in together for long periods of time inside the store-room which is attached to the co-respondent's classroom. In the afternoons and on Saturdays during school days they were frequently together. During the school holidays between March 1973 and April 1974, the respondent and the co-respondent

attended the Baharuddin Vocational Institute three to four times a week which attendance was not essential. The respondent used as many as three underwears a day when she attended Baharuddin Vocational Institute. On one occasion, she admitted personally that she was locked in with the co-respondent together in the co-respondent's store-room.

(b) During the relevant period the respondent was on contraceptive pills without the knowledge and consent of the petitioner and subsequently had an intrauterine device inserted into her. The respondent had no reason to take such pills or to have such device inserted into her during the petitioner's absence from Singapore.

The petitioner will ask the court to infer from the matters hereinbefore set out that the respondent and the co-respondent committed adultery together at Baharuddin Vocational Institute, Stirling Road, Singapore, aforesaid and elsewhere as and when opportunity offered."

There is no evidence at all that the respondent and the co-respondent were on extremely affectionate terms as alleged.

There is no evidence at all that the respondent used as many as three panties a day when she attended the Baharuddin Vocational Institute. The respondent explained that there were occasions when she had used three panties a day and it was when her panties were soiled by her menstrual flow. She explained that on the day of a heavy flow she may use as many as four panties.

There is no evidence that "on many occasions they locked themselves in together for long periods of time inside the store-room attached to the co-respondent's class-room". They were found together in the co-respondent's locked class-room only on one occasion. The petitioner's case is based substantially on this fact and on the fact that the respondent consumed contraceptive pills and later had an intrauterine device inserted into her.

I shall deal first with the contraceptive pills. The circumstances under which she came to consume these pills are as follows. She gave birth on October 4, 1970 at the Mount Alvernia Hospital. She had been under the care of Dr. Tow Siang Hwa, a former professor of obstetrics and gynaecology and when she went to him for her first post-natal check-up, he asked her if she wanted any contraceptives. He told her that he was conducting some sort of scientific research on a brand named "Caution S 4" and that he needed educated and intelligent women like her to try out and report on their reactions. He gave her three packets and three forms which she had to fill in everyday. She accepted them. The three packets lasted three months. She started consuming them in December 1970 and when she had finished the three packets, she returned the three forms to Dr. Tow together with a letter in which she asked him for his medical opinion as to whether or not the pills were suitable and if they were she asked him to send her another six packets. Dr. Tow sent her a prescription for six packets of another brand. She purchased the six packets on his prescription, tried one packet to see if there were any side effects and kept the other five. She found that there were no side effects.

The respondent explained that she kept the five packets in order to consume them whenever she heard that the petitioner was returning from London. She stated that her son Koh Lib Wee was conceived when both of them were still students and not ready to start a family and she did not want another untimely pregnancy. She felt it was not time for another baby.

It is relevant here to observe that both, in December 1970 when she received the three packets of contraceptives from Dr. Tow, and also in April 1971 when she asked for and received the prescription for another six packets, she had not yet met the co-respondent. She joined the Baharuddin Vocational Institute in October 1971 and it was only when she joined the Baharuddin Vocational Institute that she met the co-respondent for the first time.

The petitioner returned to Singapore in April 1972. The respondent explained that she knew it about a month or six weeks before that, that the petitioner would be returning in April 1972. She stated that it was her father-in-law who mentioned it over the dining table that it was high time for his son to come and see his grandson and that he would be sending his son an air ticket. The respondent stated that when she heard that, she prepared herself for her husband's return by starting on the contraceptive pills.

The respondent stated that when the petitioner returned in April 1972, they had intercourse. Just before the intercourse she told the petitioner that she had taken the precaution and that she was on contraceptive pills. After the intercourse, the petitioner asked her how many pills she had consumed. She told him that in all she had consumed up to that day 6½ packets which included the three packets first given to her by Dr. Tow. The petitioner became very unhappy about it. He woke up his parents and told them about it. The petitioner's mother asked the respondent to surrender the balance of the pills. She surrendered the balance of 2½ packets to the petitioner's mother.

In my view the taking of contraceptive pills by the respondent does not prove that she was committing adultery.

First of all, it was Dr. Tow who started her on contraceptive pills. It was he who persuaded her to try a three months' supply of "Caution S 4" contraceptive pills because according to him he needed intelligent educated women like her to try them and record daily on a Form any reaction which they felt. This was admitted by Dr. Tow.

It must also be borne in mind that it was the respondent who voluntarily disclosed to the petitioner that she was taking contraceptive pills. Would she do this if she was taking them for the purpose of extra-marital relations?

I accept the respondent's explanation of the circumstances under which and the reason for which she consumed the contraceptive pills totalling 6½ packets in all.

The respondent's explanation for having an I.U.D. inserted into her is as follows: —

"... After his return to London in May 1972, the petitioner kept up correspondence with me. He wrote about chemical effects of contraceptive pills. He advised me not to take them. I replied to him and told him that I would listen

to his advice. But on the other hand I was very worried about another untimely baby because financially and emotionally we were not ready for another child. I wrote to the petitioner and sought his opinion about mechanical contraceptive methods. He did not express any views on such methods.

I remember writing to him in December 1972. His father had told him to return by December 1972 or the latest by Chinese New Year 1973 otherwise his father said that he would cut off financial support in order to force him to return. So I wrote to him in December 1972 urging him to express his views on mechanical methods of contraception. I told him that if by the December 30 I did not hear from him of any objection to the mechanical contraception methods, I would then go to consult the Koh family doctor, Dr. Balhatchet, on mechanical contraception methods. I received no reply to that letter. So I went to consult Dr. Balhatchet in the first week of January 1973. Dr. Balhatchet recommended the I.U.D. — the loop. He referred me to Dr. Goon at K.K. Maternity Hospital. Eventually I had the loop inserted by Dr. Chung (PW9). I returned to Dr. Chung for a check-up, one month later. I went for all these check-ups but not on the exact date.

I do not have the loop now. I had it removed on May 2, 1975. By May 2, 1975 which was three days prior to the first hearing in this court, I knew by then that there was absolutely no hope of reconciliation with my husband because if he should win, there would be a divorce. Furthermore, I was baptised on March 30, 1975 into the Roman Catholic faith and the priest told me that the Roman Catholic religion objected to any artificial contraception methods. Before becoming a Roman Catholic I did not consult my husband. . . ."

The petitioner denied receiving any letter from the respondent asking for his views on "mechanical methods of contraception". He also maintained that there was never any firm indication of his return to Singapore in early 1973. The petitioner has produced at this trial numerous letters of the respondent, some of them written as far back as 1969 but not a single one written in December 1972.

I accept the respondent's evidence that she wrote to the petitioner in December 1972 asking for his opinion about mechanical contraceptive methods. I also accept her evidence that the petitioner's father had given the petitioner an ultimatum that he should return to Singapore at the latest by Chinese New Year in 1973. This is supported by two letters written by the respondent to the petitioner's father. The petitioner's mother had forbidden the respondent to talk to the petitioner's father and every time she had something important to tell him, she had to write a letter to him. Ridiculous as this may seem, the truth of this state of affairs, although denied, has been proved beyond doubt. In a letter written in Chinese by the respondent to the petitioner's father on the July 21, 1973 (Exhibit P28), she wrote: "Things have passed, the limited period has failed". According to the respondent, this passage should have been translated as "your ultimatum of a dead line had also lost its effect". In another letter (Exhibit P18) written by her to the petitioner's father in Chinese on the March 12, 1974, she wrote: —

"I remember when Teng Nam returned home in 1972, you gave him a time limit up to the end of 1972 or early 1973. In 1973 I sold the Savings Bond authorising Teng Nam to make use of the little amount whenever he wished, for fear that you might stop financing him. In April the same year, I told Teng Nam to rush back to join me in attending this night class. In July, another letter was sent to advise him that we could study together. He did not return as required and I had no alternative but to attend the class alone."

These two letters are not fabrications. They were written long before there was any trouble between the parties and they are tendered in evidence by the petitioner. They clearly support the respondent's claim that the petitioner's father had given him an ultimatum to return to Singapore by the end of 1972 or the latest by Chinese New Year 1973 (which fell in February that year) failing which he would stop his financial support.

The circumstances under which the respondent had the I.U.D. inserted do not support the petitioner's contention that it was inserted for an ulterior purpose. The respondent went to the petitioner's family doctor, Dr. Balhatchet for advice. It was he who referred her to the K.K. Family Planning Unit where the I.U.D. was inserted. All the medical bills were paid by the petitioner's father. Their family doctor knew that an I.U.D. had been inserted. The respondent did not get it done secretly which she could have easily done. She kept the Family Planning Unit Card in her drawer which was not locked. The respondent was not at all secretive about the whole matter. If the purpose was for extramarital relations, why insert an I.U.D. at all? She could have continued secretly on contraceptive pills. No one would have known anything about it.

There is here a clear picture of a dutiful and obedient wife, expecting her husband to return soon because of the ultimatum given by his father and being fearful of another untimely pregnancy, she writes to him asking for his opinion on mechanical contraceptive methods. When he fails to reply she obtains advice from their family doctor and has an I.U.D. inserted. And when the ultimatum expires and he fails to return, fearing that his father may stop supporting him, she sells her Savings Bonds and puts the money at the petitioner's disposal.

In my judgment in the face of all this evidence, it would be totally erroneous and unjust to infer that the respondent had the I.U.D. inserted for the purpose of extramarital relations.

I now come to the incident of the April 27, 1974 when the respondent and the co-respondent were both in the locked classroom of the co-respondent. The respondent's version is as follows: —

"I remember April 27, 1974. It was a Saturday. I had an appointment with Miss Cecilia Ong. She is a producer at R.T.S. for a programme called 'Art Circle'. The appointment was for 10 a.m. to do a recording for an art critic for the 'Art Circle'. The recording took place a little after 10 a.m. It ended at 10.45 a.m. After the recording, Cecilia Ong accompanied me to the front entrance. I waited there for a taxi. We waited for a long time. She told me she had a problem finding enough people to interview for her programme. I mentioned to her that the co-respondent had just won the first prize in the competition for a fountain sculpture for Plaza Singapura. She said she would like to interview him for the programme. I mentioned to her that the co-respondent might have a problem about the English language. She asked me to help her by informing the co-respondent and preparing him for the interview. She indicated to me the questions she would like the co-respondent to answer at the interview.

I left R.T.S. and went to B.V.I. because I knew that the co-respondent always came to the Institute to work on Saturdays and I would be able to inform him about the interview with Miss Cecilia Ong. I arrived at B.V.I. about 11.30 a.m. I went to the co-respondent's workshop. The door was closed but I knew he was in. I knocked on the door. I could see

through the glass panel of the door that the co-respondent was inside. When I knocked on the door, I think he was cleaning his hands with a piece of cloth or rag. He came towards the door and opened it. I heard him turn a key and the handle of the door. I told him the purpose of my visit and asked if he was interested to be interviewed. He replied 'yes' and said, 'Come in.' I went in and he asked me to go to his office. The door of his office was closed. He was about to go home. He opened the door of his office and switched on the light. We sat at his table and discussed the questions and answers for the interview. We talked about the inspiration for the sculpture — the prize winning sculpture and how he constructed it in full scale. As he was talking I was writing it down in English. I discussed with him the phraseology and the words to use for the interview. After about 20 minutes or half an hour, there was a knock on the door of the workshop. The co-respondent got up from his seat and went to open the door to see who it was. The workshop door was then shut, but the office door was open. I noticed that the co-respondent took a key from the key hole of the office door and went to open the workshop door. Before that point of time I was not aware that the workshop door was locked. I did not know who the visitor was. I heard the co-respondent talking to a man. Later I discovered that it was Mr. Lim. I was sitting down and writing on the co-respondent's desk in his office. Their conversation lasted one or two minutes and then the co-respondent returned to his office. I asked him who it was and he said it was Mr. Lim (PW5). Then I asked him, 'Just now I saw you taking the key from the office key hole to open the workshop door. Do you mean you locked the workshop door after I came in'? He said, 'Yes. I did'. I more or less ticked him off. I told him that he should not have locked the door after I came in because people might have ideas. The co-respondent said, 'I always lock my door' and he grumbled 'that Mr. Lim had come to bother me a few times already this morning'. We continued to finish our preparation for the interview for another 20 minutes or half an hour. After we finished we went home. I took a bus home. He went in another direction.

On Saturdays the school was functioning. There were extra-curricular activities. All the instructors and the entire administrative staff had to be present on all Saturdays. . . ."

The co-respondent's classroom has been described as a work shop. It is in fact a large classroom where he teaches his students. Attached to it is a store which the co-respondent has converted into an office. In this office, he has a large writing desk, chairs and other odds and ends as can be seen from the photograph tendered at this trial. One has to go through the classroom to this office of the co-respondent.

The respondent's version is corroborated by the co-respondent. He produced Exhibit CR2 and CR3 which are the documents on which they were working. The respondent stated that the co-respondent sat at his table in his chair while she sat at the side of his table facing him and as they were discussing the questions which the co-respondent would have to answer at the interview with Miss Ong, the respondent wrote in pencil some Chinese characters on the side of Exhibit CR2. This document has not been challenged by the petitioner and in my opinion it supports the respondent's version.

The respondent's claim that all the lecturers and all the administrative staff of the Baharuddin Vocational Institute had to attend school on Saturdays because of extra-curricular work has also not been challenged.

The respondent's version is not only supported by the co-respondent but is also supported by Miss Cecilia Ong, a totally independent witness.

The petitioner relies on the evidence of Lim Guan Poon (PW5) the person who came and knocked on the door. According to him, when the co-respondent opened the door and saw him the co-respondent's face "suddenly blushed — turned red"

Lim Guan Poon did not appear to me to be an impartial witness. The evidence shows that he was in league with the co-respondent's wife and instead of helping the co-respondent by patching the differences between him and his wife, he was out to make matters worse. He admitted, under cross-examination, that at 3 p.m. on that day, the co-respondent's wife saw him and he took her to see the petitioner's mother. He admitted further that on the next day he took the co-respondent's wife to Johor Bahru in his car. In my opinion he was clearly a biased witness and had embellished his evidence to suit the petitioner's case.

I place no reliance at all on his evidence. In any case he saw nothing improper. In fact he did not see the respondent in the co-respondent's office. He does not know what they were doing. His evidence on the crucial issue is worthless. He admitted, under cross-examination, that he has never seen the respondent and the co-respondent doing anything improper.

The evidence shows that:

(1) the co-respondent had the habit of locking his classroom door. This is borne out by Sim Man Pung (RW3) and Yeaw Yau Wah (CRW2). For example, the co-respondent's classroom door was locked at 9 a.m. that morning when the respondent was not with him and he was alone in his classroom. This is admitted by Lim Guan Poon who found the door locked when he first called on the co-respondent at 9 a.m. on that day;

(2) the co-respondent's office light was on. This would indicate to all passersby that he was inside his office. If the co-respondent wanted to do anything improper with the respondent, he would certainly have switched off the light so that no one would know of their presence in the office;

(3) Lim Guan Poon admitted that he did not know that the respondent was inside the co-respondent's office. It was the respondent who voluntarily informed him, at a later date, that she was with the co-respondent on the April 27, 1974 when he came and knocked on his classroom door.

On the evidence before me I find it impossible to believe that the respondent and the co-respondent would fling discretion to the wind to such an extent as to indulge in illicit relations in a classroom with full lights on, during working hours on a day when all instructors and administrative staff were there and anyone of them could come and knock on the door, as indeed one of them did.

The respondent and the co-respondent have given a full explanation as to why and how they came to be in that locked classroom. They have denied on oath the suggestion that they had intercourse in that locked classroom. The task of the court is to decide whether or not there was any intercourse. In discharging that task I have to consider and weigh up all the relevant evidence and decide what inference can fairly be drawn. Before doing that I must bear in mind what Lord Buckmaster said in *Ross* v. *Ross*.[15] Referring to proof of adultery, he said, at page 7: —

"... Adultery is essentially an act which can rarely be proved by direct evidence. It is a matter of inference and circumstance. It is easy to suggest conditions which can leave no doubt that adultery has been committed, but the mere fact that people are thrown together in an environment which lends itself to the commission of the offence is not enough unless it can be shown by documents, *e.g.* letters and diaries, or antecedent conduct that the association of the parties was so intimate and their mutual passion so clear that adultery might reasonably be assumed as the result of an opportunity for its occurrence...."

And Lord Atkin added, at page 21: —

"... But from opportunities alone no inference of misconduct can fairly be drawn unless the conduct of the parties prior, contemporaneous, or subsequent justifies the inference that such feelings existed between the parties that opportunities if given would be used for misconduct...."

In this case, there is not even the slightest evidence of any act of familiarity on the part of the respondent and the co-respondent. No one has ever seen them holding hands, hugging or doing anything else improper. There is no evidence at all of any adulterous tendency or disposition on the part of either of them, nor of any undue familiarity.

To use the words of Edmund Davies L.J. in *Bastable* v. *Bastable, supra*, the fact that the respondent and the co-respondent were found together in a locked classroom is "solid ground for profound suspicion; but suspicion of adultery, of course, is not enough, still less is mere opportunity to commit it. It must be proved.".

I find that the explanation given by the respondent which is corroborated by the co-respondent and supported by the documents on which they were working, when considered in the light of all the surrounding circumstances is not only reasonable but also very convincing. In my opinion they are speaking the truth and I accept their version of the incident. I therefore reject the petitioner's suggestion that illicit intercourse between the respondent and the co-respondent took place in the co-respondent's locked classroom on the April 27, 1974.

There is one other incident which must be dealt with. On the May 12, 1974, the co-respondent's wife, Mrs. Tan Teng Kee, went to 15 Matlock Rise, the residence of the petitioner's parents and there in their presence she accused the respondent of having an affair with her husband. The respondent denied it and told her that there must be some misunderstanding on her part. Mrs. Tan Teng Kee was not called as a witness. It is not known on what evidence she was making the accusation. The accusation was not made on oath and was not subject to cross-examination. There is evidence that Mrs. Tan Teng Kee had been seeing Lim Guan Poon and also the petitioner's mother before that day. As the respondent did not make any admission, what Mrs. Tan Teng Kee said on May 12, 1974 at 15 Matlock Rise was irrelevant and inadmissible.

This confrontation with the respondent by Mrs. Tan Teng Kee was made some two weeks after the incident of the April 27, 1974 and in the mean time she had been in close touch with Lim Guan Poon and the petitioner's mother. It is obvious that Mrs. Tan Teng Kee had been hearing rumours and what she said on the May 12, 1974 at 15 Matlock Rise was hearsay upon hearsay, worthless as evidence and totally inadmissible because the respondent admitted nothing. This incident does not carry the petitioner's case any further.

It is submitted by counsel for the petitioner that the taking of the contraceptive pills, the insertion of an I.U.D. and the incident of April 27, 1974, when they were found together in a locked classroom, all these incidents should not be considered in isolation. They should be considered together in the light of the respondent's character and her propensity towards extramarital intercourse. Reliance is placed on the following passage which appears in one of the letters (Exhibit P18) written by the respondent to her father-in-law: —

"... A woman is asking for the impossible if she expects her husband never to touch other women. As long as he does not go beyond the limit I am able to accept his request. But, I must add, all the men in this world should not think that this is their privilege. Both men and women are human beings, they are both curious and look for thrills and innovations. They are discontent and like a change of taste. This is part of 'human nature'. If such a thing happens to the other party he too must accept it...."

Counsel for the petitioner has refrained from reading the following, which follows the above passage: —

"Father (father-in-law), this of course is just my theory, whether to do it or not still has to depend on a person's character, propriety and human philosophy etc. But this will affect the relationship between the two of us. A majority of women worry day in and day out about their husbands womanising outside. Teng Lam and I have been separated for four years and I have never worried about such a thing. He however, is constantly sceptical of each and every movement I make. He is jealous of every man, irrespective of his age, nationality, status, background and education, who comes into contact with me. I do not know whether this is a happy or sad affair...."

It is clear from the second passage that what the respondent was saying in the first passage was "just theory". It does not show an inclination towards extramarital relations. She was in fact complaining to her father-in-law against her husband and pointing out his very suspicious and jealous nature.

Counsel for the petitioner also relies on the evidence of the petitioner's mother that when she told the respondent that she should not take contraceptive pills in the absence of her husband, the respondent replied that she (the mother-in-law) was old fashioned and added: "Men can look for women and women can also look for men". The respondent has denied saying this. I accept the respondent's version. In my opinion the petitioner's mother was not speaking the truth and fabricated this piece of evidence to further her son's case. She is a person who would do anything to get rid of the respondent whom she has disliked ever since the incident of March 6, 1970 which resulted in the petitioner being admitted to hospital. She blames the respondent for that incident and has never forgiven her.

In my judgment the petitioner has failed to prove any act of adultery on the part of the respondent and it follows that the charge of adultery fails.

I now come to the most difficult question in this case which concerns the child of the marriage, Koh Lib Wee, who is now five years old. To whom should

custody of this boy be granted? The petitioner and the respondent both desire custody of Koh Lib Wee and each contends that custody should not be granted to the other. This question has to be decided in accordance with the provisions of section 3 of the Guardianship of Infants Act, which provides as follows: —

"Where in any proceedings before any court the custody... of an infant... is in question, the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration and save in so far as such welfare otherwise requires the father of an infant shall not be deemed to have any right superior to that of the mother in respect of such custody... nor shall the mother be deemed to have any claim superior to that of the father...."

This section is based on section 1 of the Guardianship of Infants Act 1925 of England and the requirement that the court must regard "the welfare of the infant as the first and paramount consideration" was considered and explained by Megarry J. in *Re F (an infant*[16]), as follows, at page 767: —

"In deciding this issue, I begin with my duty under the Guardianship of Infants Act, 1925, section 1, to 'regard the welfare of the infant as the first and paramount consideration', disregarding whether from any other point of view the father's claim is superior to the mother's or vice versa. I also bear in mind the decision of the Court of Appeal in *Re L (infant)*, [1962] 3 All E.R. 1, that 'paramount' does not mean 'exclusive'. The welfare of the ward is to be the pre-eminent or superior consideration; but that does not mean that I should leave out of account the conduct of the parties. In that case, the decision of Plowman, J. was reversed because he had excluded from consideration the conduct of the parties The Court of Appeal held that where the mother had by her conduct broken up the matrimonial home, that was a matter to be taken into account....

I think that the practical effect of section 1 in conjunction with *Re L (infant), supra* is that in these cases the court should consider and weigh all the circumstances that are of any relevance. Quite apart from authority, the word 'first' in the section implies that there are other circumstances that are to be considered in this process of consideration and weighing. In doing this, a special weight must be given to the welfare of the infant. This may so clearly point in one direction that it concludes the matter, even if every other consideration points in the opposite direction. On the other hand, it may be that the welfare of the infant would be equally served which ever parent has care and control; or the balance may fall on one side by only a small amount. In those circumstances, the other considerations may be sufficiently strong to determine the matter.

I do not think that one can express this matter in any arithmetical or quantitative way, saying that the welfare of the infant must, in relation to the other matters, be given twice the weight, or five times the weight, or any other figure. A 'points system' is, in my judgment, neither possible nor desirable. What the court has to deal with is the lives of human beings, and these cannot be regulated by formulae. In my judgment, I must take account of all relevant matters; but in considering their effect and weight I must regard the welfare of the infant as being first and paramount...."

A number of other cases have been cited on the issue of custody, but in the jurisdiction concerning custody when everything depends on the particular circumstances of the case before the court, it is dangerous to place too much reliance on other cases where orders have been made in different circumstances.

A very serious allegation has been made by the petitioner and his mother against the respondent and I must deal with it first before going any further. They allege that Koh Lib Wee suffers from penile erections as a consequence of his mother's fondling of his penis.

As a result of this allegation the boy was seen and examined by a number of doctors who have given evidence. The petitioner called Dr. Siak Chong Leng who claimed that he was a specialist in the medical treatment of babies and children and Dr. Wong Yip Chong, a consultant psychiatrist. Both of them admitted that there was nothing wrong with Koh Lib Wee organically or psychologically. Both stated in their medical reports that the boy had told them that his mother used to fondle his penis. The boy has not been called as a witness and these statements are not evidence in this court. Furthermore it is not for Dr. Siak or Dr. Wong to decide whether or not the boy was speaking the truth.

The respondent was so upset by this allegation that she not only had Koh Lib Wee examined by Prof. Wong Hock Boon, Head of the Department of Paediatrics at the University of Singapore, but also had herself examined by Dr. Tsoi Wing Foo, the Medical Superintendent of Woodbridge Hospital which is a mental hospital. She also had Koh Lib Wee examined by Dr. Wong Sze Tai, a consultant psychiatrist of the Child Psychiatric Clinic.

Prof. Wong Hock Boon had the boy admitted into the children's ward of the Outram Road General Hospital where a thorough clinical examination of the boy was done and he was kept under observation by Prof. Wong, his doctors and his nursing staff. Prof. Wong gave evidence for the respondent. He stated that Koh Lib Wee was referred to him for consultation with regard to the possibility of Koh Lib Wee suffering from priapism which is involuntary painful penile erection usually due to disease or damage to the spinal cord or spinal nerves. He stated that a thorough clinical examination and observation by him and his medical staff did not reveal any physical abnormality. He also explained that it is extremely common for boys of Lib Wee's age to have penile erections. So long as the central nervous system is intact in a boy, this is a normal reflex activity. Throughout the boy's stay in hospital, he did not receive any complaint from the boy about his having penile erections. He went on to explain that there is a great difference between priapism and penile erection. Priapism is penile erection as a result of disease or damage while penile erection can occur without any damage or disease of the central nervous system. Prof. Wong's evidence was not challenged.

Dr. Wong Sze Tai of the Child Psychiatric Clinic gave evidence for the respondent. He stated that from all his findings and investigations, he was of the opinion that there was nothing wrong with the boy psychiatrically.

The evidence of all the four medical witnesses called on this issue shows that there is nothing wrong with Koh Lib Wee either organically or psychiatrically.

I cannot understand why so many medical witnesses were called when there is nothing wrong with the boy. The issue here is not whether the boy has penile erections, which phenomena, as stated by Prof. Wong, is extremely common with boys of Koh Lib Wee's age, but whether he has penile erections caused by his mother fondling his penis. I can't see how

medical witnesses can help on this issue of fact. There is no evidence at all that the respondent has been fondling her son's penis. No one has seen her do that. The petitioner's mother admitted under cross-examination that she had never seen the respondent fondling Koh Lib Wee's penis. And as for the petitioner, he was in England during most of the relevant time and knows nothing about this matter, save and except what his mother had been telling him. This is quite clearly a false allegation fabricated by the petitioner's mother to show the respondent in bad light, as a person with a perverted mind and therefore unfit to have the custody of her son. I find that the allegation is baseless and I therefore reject it.

The respondent was examined by Dr. Tsoi Wing Foo, the Medical Superintendent of Woodbridge Hospital. She was also examined by Dr. Wong Sze Tai, a consultant psychiatrist with the Child Psychiatric Clinic, who interviewed her on no less than 24 occasions. Both Dr. Tsoi and Dr. Wong are of the opinion that the respondent is a stable person and is psychiatrically normal. I accept their evidence.

The petitioner was examined by Dr. Peter Storey, Dr. C. N. Chen, Dr. Wong Sze Tai and Dr. Wong Yip Chong. Dr. Storey's evidence was taken in England on commission and he says that over the course of time during which he was treating the petitioner, he was able to form a diagnosis of "personality disorder".

Dr. Chen is the doctor who treated the petitioner when he was admitted for observation to the Atkinson Morley's Hospital. Dr. Chen did not give evidence in this case, but in a medical report (Exhibit P5) on the petitioner which was tendered in evidence by the petitioner, Dr. Chen states he made "a clinical diagnosis of reactive depression in a person with immature personality". And according to Dr. Storey "immature personality" is another way of describing "personality disorder". According to Dr. Wong Sze Tai, who had three interviews with the petitioner and his mother, he found the petitioner to be "an introverted, unstable, suspicious and over jealous type of person". He says that "the evidence suggests that the petitioner has a "disorder of personality". On the other hand according to Dr. Wong Yip Chong, a consultant psychiatrist who saw the petitioner on several occasions, the petitioner "does not appear to be suffering from any major psychiatric condition nor does he appear to suffer from any serious personality deviations". I accept the opinion expressed by Dr. Peter Storey, which is supported by Dr. Chen and by Dr. Wong Sze Tai that the petitioner is suffering from a "personality disorder".

Dr. Wong Sze Tai states in his Report (Exhibit R15) at page 11: —

"... From the psychological and psychiatric viewpoints, considering the quality of child care, the personalities and the mental health of the parents, the evidence suggests that the mother will make a better custodian than the father.

A boy of 4 years 5 months has great need of both parents. Being male, the presence of a stable, good father figure is important for his personality development, particularly when he reaches adolescence. Research studies on families with fathers who suffer from personality disorders have so far indicated that the male (and not the female) offsprings have a greater tendency to develop emotional and behavioural disorders. This fact also favours the mother to be the better custodian than the father...."

I consider this opinion, coming from a consultant psychiatrist who is the Head of the Child Psychiatric Clinic, which is a Government Clinic, to be of some importance and relevant on the issue of custody and it is something which I should take into consideration in deciding this issue.

As regards accommodation, the respondent now lives in an apartment at the People's Park Complex which is in a heavily built up area often described as "China Town". Her apartment has only one bedroom. She lives there with her mother who is from Hong Kong and is here on a visit pass. It is not known how long the respondent's mother will stay here or will be allowed to stay here. A person on a visit pass has to leave sooner or later unless the person is granted permanent residence which is rarely granted although it has been granted to old people in some cases on compassionate grounds.

The petitioner on the other hand has no home of his own in Singapore. He has never set up a matrimonial home for his wife and son in Singapore. His wife and son have been living with his parents and on his few short flying visits to Singapore he has always stayed with his parents at their home in Matlock Rise in Braddell Heights Estate which is one of the good residential areas in Singapore.

In my opinion it is completely wrong to compare the respondent's home with that of the petitioner's parents. The comparison should be with the petitioner's home and he has none at present in Singapore. Furthermore he has stated in his evidence that he intends to return to England to continue his studies for his Ph.D. degree. It is not known how long he will take to get that degree. He has been at it for six or seven years already. In all he has been in England now for 14 years. There is the possibility that he may not return to Singapore at all because it has been said in evidence in this case that a person with a Ph.D. in physics has no future in Singapore.

I now come to the matrimonial conduct of the parties in this case. The petitioner has neglected his duty and indeed, his main matrimonial duty to his wife and son which is to live with them and provide and maintain for them a matrimonial home. He has dumped his wife and son with his parents in Singapore and lived separately in London for over four long years. During that period the respondent has had to work and support herself and her son and lead a lonely life while he has been, according to him, studying in London for his Ph.D. degree. If he was so concerned with his studies and is determined to get a Ph.D. degree, no matter how long it took him to do so, then, he should not have married at all. There is no doubt at all that the petitioner has behaved in a selfish and irresponsible way, doing what he wanted to do and not at all caring for his wife and son. The respondent has not only been deserted and her expectations of a happy home life blasted, but her whole matrimonial felicity has been ended through no fault of hers. If at all there is any evidence of cruelty in this case, it is cruelty on the part of the petitioner, for he has not

only done all this but has also not refrained nor hesitated from raising his hand against the respondent. As the respondent is not charging the petitioner with cruelty I shall not go into these assaults any further, although it has been held that cruelty by a husband towards his wife is relevant on the issue of custody of the children of the marriage. The respondent on the other hand is ready to forgive the petitioner and have him back. She says that she hopes that some day the petitioner will realise his mistake of listening to false rumours and will come back to her.

Apart from the conduct of the parties, there is a further practical consideration, recognised in many cases, including *Re L (infant)*,[17] *supra*, and *H and H and C*,[18] that as a general rule it is better for small children to be brought up by their mother and this, of course, is a consideration of great importance. As was observed by Lord Evershed M.R. in *Re B (an infant)*,[19] at page 873: "...as a matter of human sense a young child is better with its mother and needs a mother's care".

As to justice between the parties in the responsibility for the break-up of the marriage, the respondent has a substantial advantage. She has not done anything to break up the marriage. It is the petitioner who has been listening to false rumours and as a result has refused to live with the respondent and accept her as his wife. He has withdrawn from their matrimonial life without any justifiable cause.

There is one other very important consideration in this case. It is the possibility of the petitioner and the respondent becoming reconciled. The granting of the custody to the respondent in this case will keep alive some hope, even though slight, of a reconciliation. The petitioner may in time realise that he has been listening to false and malicious rumours. If custody is granted to the petitioner, there will be, in my opinion, no hope at all of a reconciliation. The possibility of a reconciliation is clearly an important matter which I must take into consideration in deciding the question of custody.

It is said that if custody of Koh Lib Wee is granted to the respondent, the little boy will be greatly distressed and upset at parting from his grandmother who has been looking after him. I can understand that but at his tender age, one knows from experience how transient are the effects of parting. Furthermore, the boy will be going back to his mother from whom he has been forcibly snatched away by the grandmother who has been treating the boy as if he was some personal chattel of hers. Little does she realise that she has no rights at all in this matter. No matter how much she may love the boy, she has no legal claim to him.

As the petitioner has indicated that he is going back to England, the granting of custody to the petitioner will in effect result in the boy's custody being granted to a third person, the petitioner's mother, and this result cannot be allowed when there is a claim by an unimpeachable parent, the respondent.

It is also highly undesirable that the care and control of Koh Lib Wee should be in the hands of the petitioner's mother who has been described by the petitioner to Dr. Storey as "dominant, very controlling, emotionally cold, that is not affectionate but at the same time what one often calls smothering". She also appears to be a woman with a warped mentality. For example, she did not allow the respondent to talk to her father-in-law. The respondent had to write to him whenever she had anything important to tell him.

If the care and control of Koh Lib Wee is left in the hands of the petitioner's mother, the boy may grow up to be another person like the petitioner, "introverted, unstable, suspicious and over jealous". Furthermore, the petitioner's mother is a much travelled woman, very fond of travelling, and is often away from Singapore and during such periods when she is away, the boy will be left entirely in the hands of servants.

On the evidence in this case and for the reasons that I have given I find it impossible to grant custody of Koh Lib Wee to the petitioner. Accordingly custody is granted to the respondent. There will be of course reasonable access for the petitioner and I trust that it can be arranged amicably in the best interests of the child.

I now come to the question of maintenance. The respondent says that as she is working and drawing a salary of $1,500 p.m. she does not require any maintenance for herself but she claims maintenance for her son. She says that she requires about $750 p.m. to rent a suitable house and about $500 p.m. for the maintenance of Koh Lib Wee. The question is: can the petitioner afford to pay $1,250 p.m. as maintenance for Koh Lib Wee? In an affidavit filed on the November 15, 1974 the petitioner has sworn, in paragraph 66 thereof as follows: —

> "...Although I am unemployed, I am the owner of an apartment in a good residential area in Singapore, which will soon be income producing. I am also the beneficial owner of a number of stocks and shares....
>
> I shall soon be assuming a directorship in the family's holding company form which I expect to be suitably remunerated...."

On this admission of the petitioner, I am of the view that he can afford to pay the sum of $1,250 p.m. which will be sufficient to allow the respondent to maintain Koh Lib Wee at his present standard of living. Accordingly there will be an order that the petitioner pay the respondent the sum of $1,250 p.m. as maintenance for his son Koh Lib Wee as from the December 1, 1975.

The petition for divorce against the respondent and the co-respondent is dismissed with costs.

Order accordingly.

Solicitors: *Francis T. Seow; Lee & Lee.*